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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/342,453	06/29/1999	EDGAR J. ST. PIERRE	E0295/7100/R	6555

7590 11/04/2003

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EXAMINER

THAI, TUAN V

ART UNIT	PAPER NUMBER
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2186

DATE MAILED: 11/04/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/342,453

Applicant(s)

ST. PIERRE ET AL.

Examiner

Tuan V. Thai

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE ____ MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 17 October 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-39 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-39 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 10 March 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on ____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). ____.
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) ____ 6) ☐ Other: ____.

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Part III DETAILED ACTION

1. This action is responsive to request for continuation filed on October 17, 2003. Claims 1-39 are presented for examination. Claims 40-56 have been canceled.

2. Applicant is reminded of the duty to fully disclose information under 37 CFR 1.56.

3. Applicant's arguments have been moot in view of new ground rejection.

Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

5. Claims 1-39 are rejected under 35 U.S.C. 103(a) as being unpatentable over Whiting et al. (USPN: 5,778,395); hereinafter

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Whiting;

As per claims 1, 7, 13, 20, 30-31, 36, 37 and 38; Whiting, in his teaching of system for backing up files from disk volumes on multiple nodes of a computer network, discloses the invention as claimed including copying only a subset of the backup data onto at least one computer-readable duplicate backup storage medium as duplicate backup data so that the duplicate backup storage medium is not an exact duplicate of the at least one backup storage medium is being equivalently taught by Whiting as after the initial backup on a particular volume (disk space), ONLY files which have changed since the previous backup are actually read from the volume and stored on the backup storage (emphasis added, e.g. see abstract, column 5, lines 7 et seq.). Whitting teaches the invention as claimed with one exception that he does not specifically teach copying/backing-up only a subset of the backup data *from the at least one backup storage medium* as being amended. First of all, it should be noted that, Whitting clearly disclose the INCREMENTAL DATA BACKUP wherein backing-up only changed data from previous backing up could have been happened from either (a) the original storage medium or (b) the back-up storage medium. Even though Whitting does not specifically disclose as to where the comparison of data would be made for determining the change of data, one would readily

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recognize that memory access operation from smaller memory storage capacity would yield faster response time. Accordingly, it would have been obvious to one having ordinary skill in the art at the time the current invention was made to readily recognize, realizing and to implement the incremental backup operation from the backup storage medium; in doing so, it would yield quicker response time, reducing access latency since backup storage medium known to has smaller data storage capacity as being compared to the original data source; therefore being advantageous.

As per claims 2-3, 8-9; 14-16; Whiting discloses copying a subset of the plurality of work items onto the duplicate backup storage medium having different properties as only those files/data which have changed since the previous backup are actually read from the volume and stored on the backup storage means of disk spaces of different network file server which is known to have different properties (e.g. see abstract, column 5, lines 20 et seq.; column 6, lines 20 et seq.);

As per claims 4, 10, 17; copying the subset of the backup data onto at least one duplicate backup storage medium of a different type than the at least one backup storage medium (e.g. see column 6, lines 20 et seq.);

As per claims 5, 11, 18; storing in a logical duplication

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database a record indicating that the subset of the backup data copied which has been copied to the at least one duplicate backup storage medium (e.g. see column 8, lines 8 et seq.);

As per claims 6, 12, 19; Whiting discloses wherein the at least one backup storage medium comprises a first backup storage medium including incremental backup data for at least one data item ... as being equivalent to the concept of delta computation wherein differences between file versions are computed so that only the changes to the file need to be written on the backup storage means; noting that Whiting discloses the backup process creates two files containing information about each backup set wherein these files could be combined into a single file (e.g. see column 5, lines 20 et seq.; column 6, lines 25 et seq.; column 8, lines 42 et seq.);

As per claims 21, 32; Whiting discloses wherein the first work item is stored on a single backup storage medium, wherein the backup data further includes a second work item stored in the single backup storage medium, and wherein the method includes a step of not duplicating the second work item onto the duplicate backup medium is equivalently taught as ONLY those files which have changed since the previous backup are actually read from the volume and stored on the backup storage (e.g. see abstract, column 5, lines 7 et seq.);

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As per claims 22, 33; Whiting discloses that backup data being stored on the backup storage means of disk spaces of different network file server which is known to have different properties (e.g. see abstract, column 5, lines 20 et seq.; column 6, lines 20 et seq.);

As per claims 23, 34; Whiting discloses storing in a logical duplication database a record indicating that the first work item has been copied to the at least one duplicate backup storage means (e.g. see column 8, lines 8 et seq.);

As per claims 24, 35; Whiting disclose that 32 bit modification time is written and including both the time and date when the file was last modified, Whiting further discloses that in more advance system, several other time values could be added such as last access time, creation time, or expiration time being claimed in the current invention (e.g. see column 10, lines 38 et seq.);

As per claims 25-29; Whiting discloses the invention as claimed, detailed above with respect to claims 20-24; Whiting however does not particularly disclose a computer-readable medium having of instructions to carry out the steps of claims 20-24 to be implemented on a computer as being claimed in claims 25-29. However, one of ordinary skill in the art would have recognized that computer readable medium (i.e., floppy, cd-rom, etc.)

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carrying computer-executable instructions for implementing a method, because it would facilitate the transporting and installing of the method on other systems, is generally well-known in the art. For example, a copy of the Microsoft Windows operating system can be found on a cd-rom from which Windows can be installed onto other systems, which is a lot easier than running a long cable or hand typing the software onto another system. The examiner takes Official Notice of this teaching. Therefore, it would have been obvious to put Whiting's program on a computer readable medium, because it would facilitate the transporting, installing and implementing of Whiting's program on other systems.

Conclusion

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tuan V. Thai whose telephone number is 703-305-3842.

The examiner can normally be reached on Monday-Thursday from 6:30 AM to 4:00 PM. The examiner can also be reached on alternate Fridays or e-mailed at ***tuan.thai@uspto.gov***;

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor Matthew M. Kim can be reached on (703) 305-3821.

Any inquiry of a general nature or relating to the status of

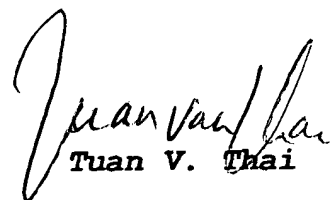
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this application or proceeding should be directed to the Group
receptionist whose telephone number is (703) 305-3900. The
Official Fax Numbers for TC-2100 is (703) 872-9306

TVT/November 01, 2003


Tuan V. Thai

PRIMARY EXAMINER

Group 2186